

**EUGENE LADD,**  
**Plaintiff**

**File No. 1:08-cv-255**

**DEBORAH THIBAUT, PAUL HEATH,  
RICHARD PLANK, JAY SIMONS,  
SUSAN BLAIR, GREG HALE,  
KRISTIN PRIOR, JACQUELINE  
KOTKIN, RAYMOND FLUM,  
DOMINIC DAMATO, and  
MICHAEL O'MALLEY,  
Defendants**

The Magistrate Judge's Report and Recommendation was filed September 3, 2009. (Paper 40.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendants' motion to dismiss (Paper 28) is GRANTED. Plaintiff's motion for summary judgment (Paper 27) is DENIED, and this case is hereby DISMISSED.

Pursuant to Federal Rule of Appellate Procedure 22(b), the Court DENIES petitioner a certificate of appealability (“COA”) because the petitioner has failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Furthermore, the petitioner cannot be issued a COA due to his failure to demonstrate that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason

would find it debatable whether the district court was correct in its procedural ruling.” See Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 6<sup>th</sup> day of October, 2009.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha  
Senior United States District Judge